

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail & First-Class Package Service  
Priority Mail & First-Class Package Service  
Contract 8

Docket No. MC2016-34

Competitive Product Prices  
Priority Mail & First-Class Package Service Contract 8  
(MC2016-34)  
Negotiated Service Agreement

Docket No. CP2016-40

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL &  
FIRST-CLASS PACKAGE SERVICE CONTRACT 8  
TO THE COMPETITIVE PRODUCT LIST

(December 21, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2866.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail & First-Class Package Service Contract 8 to the competitive product list pursuant to 39 USC 3642 and 39 CFR 3020.30 et seq.<sup>2</sup>

The Postal Service's Request includes a Statement of Supporting Justification (Statement), a certification of compliance with 39 USC 3633(a), and proposed changes to the Mail Classification Schedule (MCS) competitive product list with the additions underlined. In addition, the Request includes a public (redacted) version of Governor's Decision No. 11-6 and related analysis, and Priority Mail & First-Class Package Service

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<sup>1</sup> Order No. 2866, Notice and Order Concerning the Addition of Priority Mail & First-Class Package Service Contract 8 to the Competitive Product List, December 14, 2015.

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 8 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 11, 2015 (Request).

Contract 8. The Postal Service also filed under seal the full (unredacted) text of Contract 8, Governor's Decision No. 11-6, and a supporting financial model estimating the contract value during the first year.

The Postal Service states that Priority Mail & First-Class Package Service Contract 8 is a competitive product "not of general applicability" within the meaning of 39 USC 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6.<sup>3</sup> The Postal Service further asserts that the Statement provides support for adding Contract 8 to the competitive product list and the compliance of the instant contract with 39 USC 3633(a). Request at 2.

The effective date for Contract 8 is two business days following the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 5 (Article II). The contract is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days' prior written notification, or other specific events. *Id.* (Article III).

## COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and financial model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail & First-Class Package Service Contract 8 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues to cover costs in its first year and thereby satisfy the requirements of 39 USC 3633(a).

*Product List Assignment.* Pursuant to 39 USC 3642, the Postal Service requests that Priority Mail & First-Class Package Service Contract 8 be added to the competitive product list. 39 USC 3642 requires the Commission to consider whether "the Postal

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<sup>3</sup> Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, May 22, 2011 (Governors' Decision No. 11-6).

Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 USC 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service’s Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service’s Request to add Priority Mail & First-Class Package Service Contract 8 to the competitive product is appropriate.

*Requirements of 39 USC 3633.* Pursuant to 39 USC 3633(a), competitive prices must ensure that each competitive product will cover its attributable costs; ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service; and, not result in the subsidization of competitive products by market dominant products. Based upon a review of the financial model filed under seal with the Postal Service’s Request, it appears the negotiated prices in Contract 8 should generate sufficient revenues to cover costs during its first year and therefore satisfy 39 USC 3633(a).

As noted above, Contract 8 is expected to remain in effect for a period of three years. Contract 8 includes a mechanism for the annual adjustment of contract prices during the second and third years. Adjustments to contract prices are the lesser of a) the previous year’s prices plus the most recent average price increases of general applicability for Priority Mail Commercial Plus and First-Class Package Service, or b) the previous year’s prices plus an amount determined by formula.<sup>4</sup> Increases in Commercial Plus or First-Class Package Service prices will result in an increase in contract prices. More importantly, however, if the Postal Service does not seek a price

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<sup>4</sup> Contract 8 also permits the Postal Service, at its sole discretion, to increase Priority Mail contract prices if the number of contract packages falls below a specified quarterly minimum volume. Request, Attachment B at 2 (Article I.G.).

adjustment, or proposes a decrease in Commercial Plus or First-Class Package Service prices, there will be no change in contract prices or contract prices will decrease. Under such circumstances, if Commercial Plus or First-Class Package Service prices rise at a slower pace than the increase in contract costs, or such prices decrease during the term of the contract, the cost coverage for Contract 8 would decrease in years two and three.

This concern is mitigated somewhat by the fact that the Postal Service must file revenue and cost data for Contract 8 in its Annual Compliance Report. This data will permit the Commission to review the financial performance of Contract 8 in its Annual Compliance Determination (ACD) for compliance with 39 USC 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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